

110TH CONGRESS
1ST SESSION

H. R. 4541

To amend title XVIII of the Social Security Act to provide for patient protections under the Medicare prescription drug program for residents of long term care facilities.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2007

Mr. DAVIS of Kentucky introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for patient protections under the Medicare prescription drug program for residents of long term care facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Part D Long-
5 Term Care Patient Protection Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

1 (1) Medicare beneficiaries who are enrolled in
2 the Medicare prescription drug program and who re-
3 side in long-term care facilities are among the most
4 senior and frail of Medicare beneficiaries, and often
5 are in need of the specialized pharmacy services such
6 as those provided by long-term care pharmacies.

7 (2) Since January 1, 2006, many of the ap-
8 proximately 65 percent of residents of long-term
9 care facilities who are dually eligible for Medicaid
10 and Medicare have been “auto-enrolled” as “dual
11 eligibles” in prescription drug plans under Medicare
12 part D.

13 (3) For long-term care facility residents in par-
14 ticular, enrollment in a prescription drug plan under
15 Medicare part D can be complex and confusing, and
16 ensuring access to medically necessary medication is
17 vital to maintaining their health, avoiding hos-
18 pitalizations, and otherwise containing health care
19 costs.

20 (4) Part D enrollees residing in long-term care
21 facilities may have been auto-enrolled in one of as
22 few as 5 and as many as 20 different prescription
23 drug plans, which may not be properly tailored to
24 meet the specialized prescription drug needs of resi-

1 dents of nursing homes and other long-term care fa-
2 cilities.

3 (5) Prescription drug plans under Medicare
4 part D vary in terms of their formulary coverage of
5 the prescription drugs most frequently prescribed for
6 long-term care residents, their prior authorization
7 and other drug utilization management controls, and
8 their procedures for processing exceptions requests
9 and prior authorization requests.

10 (6) The Medicare prescription drug program
11 should be strengthened to ensure that residents of
12 long-term care facilities enjoy access to a prescrip-
13 tion drug plan that meets their needs and the
14 unique nature of the long-term care facility setting
15 in which they reside.

16 (7) Robust oversight of the Medicare prescrip-
17 tion drug program is important to prevent fraud,
18 protect beneficiaries, and maintain the program's
19 fiscal integrity, and the Federal anti-kickback stat-
20 ute and False Claims Act provide critical safeguards
21 against potential abuse.

1 **SEC. 3. INCLUDING DEFINITION FOR LONG-TERM CARE**
2 **PHARMACY UNDER MEDICARE PART D.**

3 Section 1860D–41(a) of the Social Security Act (42
4 U.S.C. 1395w–151(a)) is amended by adding at the end
5 the following:

6 “(19) LONG-TERM CARE PHARMACY.—The term
7 ‘long-term care pharmacy’ means a pharmacy owned
8 by or under contract with a long-term care facility
9 to provide prescription drugs to residents of such fa-
10 cility.”.

11 **SEC. 4. ENSURING MEDICARE BENEFICIARIES ACCESS TO**
12 **ADEQUATE LONG-TERM CARE PHARMACY**
13 **NETWORKS.**

14 (a) IN GENERAL.—Section 1860D–4(b)(1)(C) of the
15 Social Security Act (42 U.S.C. 1395w–104(b)(1)(C)) is
16 amended by striking clause (iv) and inserting the following
17 clauses:

18 “(iv) ADEQUATE ACCESS FOR LONG-
19 TERM CARE NETWORK PHARMACIES.—
20 Such rules shall require the PDP sponsor
21 of the prescription drug plan to include in
22 its network an adequate number of long-
23 term care pharmacies with sufficient ca-
24 pacity and experience with long-term care
25 facilities in a PDP region to service at

1 least 90 percent of the number of residen-
2 tial beds in such facilities in such region.

3 “(v) CONVENIENT ACCESS FOR IN-
4 DIAN HEALTH SERVICES.—Such rules may
5 include standards for pharmacies operated
6 by the Indian Health Service, Indian tribes
7 and tribal organizations, and urban Indian
8 organizations (as defined in section 4 of
9 the Indian Health Care Improvement
10 Act).”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to plan years beginning on or
13 after January 1, 2009.

14 **SEC. 5. LONG-TERM CARE BENEFICIARY PROTECTION AR-**
15 **RANGEMENTS UNDER MEDICARE PART D.**

16 (a) IN GENERAL.—Section 1860D–4(c) of the Social
17 Security Act (42 U.S.C. 1395w–104(c)) is amended—

18 (1) in paragraph (1), by inserting after sub-
19 paragraph (D) the following new subparagraph:

20 “(E) A long-term care beneficiary protec-
21 tion arrangement described in paragraph (3).”;

22 and

23 (2) by adding at the end the following new
24 paragraph:

1 “(3) LONG-TERM CARE BENEFICIARY PROTEC-
2 TION ARRANGEMENT.—A long-term care beneficiary
3 protection arrangement described in this paragraph
4 is, with respect to a PDP sponsor of a prescription
5 drug plan, a policy that requires, at a minimum,
6 each long-term care pharmacy that participates in
7 the network of the plan and that is owned by or
8 under contract with a long-term care facility to pro-
9 vide for the following:

10 “(A) COMPREHENSIVE INVENTORY AND
11 INVENTORY CAPACITY.—A comprehensive inven-
12 tory (and inventory capacity) of covered part D
13 drugs commonly used in the long-term care fa-
14 cility (including in the case of a prescription
15 drug plan that uses a formulary, a comprehen-
16 sive inventory of all covered part D drugs in-
17 cluded in such formulary) and an appropriately
18 secured area for physical storage of such drugs,
19 including any necessary additional security for
20 storing controlled substances, as required by
21 Federal and State law, for routine storage and
22 maintenance of such drugs in the business set-
23 ting of the pharmacy.

24 “(B) PHARMACY OPERATION AND PRE-
25 SCRIPTION ORDERS.—Sufficient pharmacy oper-

1 ations and prescription orders capabilities, in-
2 cluding—

3 “(i) the services of a dispensing phar-
4 macist to meet the requirements of phar-
5 macy practice for dispensing covered part
6 D drugs to residents of the long-term care
7 facility and for the performance of drug
8 utilization review for routine screenings for
9 allergies to such drugs and interactions of
10 such drugs, to identify potential adverse
11 reactions to such drugs, to identify inap-
12 propriate usage of such drugs by residents
13 of the long-term care facility, and to pro-
14 mote cost effective therapy in the long-
15 term care facility;

16 “(ii) the use of pharmacy software
17 and systems sufficient to meet the needs of
18 ordering covered part D drugs for part D
19 eligible individuals who are residents of the
20 long-term care facility and distribution of
21 such drugs to such facility;

22 “(iii) the availability of written copies
23 of the pharmacy’s procedures manual at
24 each nurses’ unit in the long-term care fa-
25 cility;

1 “(iv) the provision of ongoing inserv-
2 ice training to assure that the staff of the
3 long-term care facility is proficient in the
4 long-term care pharmacy’s processes for
5 ordering and receiving medications; and

6 “(v) following procedures specified by
7 the State Board of Pharmacy for the State
8 in which the long-term care pharmacy is
9 located for the appropriate handling of un-
10 used covered part D drugs following dis-
11 continuance of such drug by an individual
12 or the transfer, discharge, or death of such
13 individual.

14 “(C) SPECIAL PACKAGING.—The capacity
15 to provide covered part D drugs in packaging
16 required by the long-term care facility (such as
17 unit of use packaging, bingo cards, cassettes,
18 unit doses, or other special packaging), includ-
19 ing access to, or arrangements with, a vendor
20 to furnish supplies and equipment, including la-
21 bels, auxiliary labels, and packing machines, for
22 furnishing covered part D drugs in such pack-
23 aging.

24 “(D) INTRAVENOUS MEDICATIONS.—The
25 capacity to provide intravenous covered part D

1 drugs to part D eligible individuals who are
2 residents of the long-term care facility, includ-
3 ing access to specialized facilities for the prepa-
4 ration of such intravenous drugs and access to
5 or arrangements with a vendor to furnish spe-
6 cial equipment and supplies as well as phar-
7 macists and technicians trained in admin-
8 istering such drugs intravenously.

9 “(E) COMPOUNDING AND ALTERNATIVE
10 FORMS OF DRUG COMPOSITION.—The capacity
11 to provide specialized formulations for the ad-
12 ministration of covered part D drugs as re-
13 quired for part D eligible individuals who are
14 residents of the long-term care facility, includ-
15 ing such residents who are unable to swallow or
16 ingest covered part D drugs through normal
17 routes or who may require tablets to be split or
18 crushed or provided in suspensions or gel forms
19 to facilitate effective administration of the drug.

20 “(F) PHARMACIST ON-CALL SERVICE.—A
21 pharmacist who is on-call 24 hours a day and
22 7 days a week to conduct consultations by
23 means of telephone or other similar electronic
24 communication device and fill prescription re-
25 quests.

1 “(G) DELIVERY SERVICE.—The provision
2 of covered part D drugs to the long-term care
3 facility, including—

4 “(i) regular delivery service seven
5 days each week;

6 “(ii) emergency delivery service avail-
7 able 24 hours a day, 7 days a week;

8 “(iii) specific delivery arrangements
9 established through agreements between
10 the long-term care pharmacy and the long-
11 term care facility; and

12 “(iv) safe and secure exchange sys-
13 tems for delivery of such drugs to the long-
14 term care facility, including medication
15 cassettes or other standard delivery sys-
16 tems that may be exchanged on a routine
17 basis for automatic restocking.

18 “(H) EMERGENCY SUPPLIES.—Emergency
19 supply of covered part D drugs as required by
20 the long-term care facility in compliance with
21 State requirements.

22 “(I) EMERGENCY LOG BOOKS.—A system
23 for—

1 “(i) logging covered part D drugs
2 (and charges for such drugs) used from an
3 emergency supply; and

4 “(ii) a comprehensive record of the
5 covered part D drugs ordered for and ad-
6 ministered to each part D eligible indi-
7 vidual who is a resident of the long-term
8 care facility.

9 “(J) MISCELLANEOUS REPORTS, FORMS,
10 AND PRESCRIPTION ORDERING SUPPLIES.—Re-
11 ports, forms, and prescription ordering supplies
12 necessary for the delivery of quality pharmacy
13 care in the long-term care facility, including
14 provider order forms, monthly management re-
15 ports to assist the long-term care facility in
16 managing orders, medication administration
17 records, treatment administration records, in-
18 terim order forms for new prescription orders,
19 and boxes or folders for order storage and rec-
20 onciliation in the facility.

21 Notwithstanding any other provision of law, nothing
22 in this paragraph shall restrict a PDP sponsor and
23 a long-term care pharmacy from entering into an
24 agreement to provide additional protections as they
25 deem appropriate and necessary for the protection of

1 part D eligible individuals residing in long-term care
2 facilities.”.

3 (b) CONFORMING AMENDMENT.—Section 1860D–
4 4(c) of the Social Security Act (42 U.S.C. 1395w–104(c))
5 is amended in the heading by adding at the end the fol-
6 lowing: “; LONG-TERM CARE BENEFICIARY PROTECTION
7 POLICY”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to plan years beginning on or after
10 January 1, 2009.

11 **SEC. 6. LONG-TERM CARE BENEFICIARY ACCESS AND AS-**
12 **SISTANCE.**

13 (a) IN GENERAL.—Section 1860D–42 of the Social
14 Security Act (42 U.S.C. 1395w–152) is amended by add-
15 ing at the end the following new subsection:

16 “(c) ASSISTANCE FOR RESIDENTS OF LONG-TERM
17 CARE FACILITIES.—

18 “(1) IN GENERAL.—Nothing in this part shall
19 prohibit a part D eligible individual who is a resi-
20 dent of a long-term care facility, or an authorized
21 representative of such individual, from seeking or re-
22 ceiving assistance from a health care professional or
23 other appropriate individual who works at the facil-
24 ity or from the individual’s physician for purposes of

1 selecting, enrolling, disenrolling, or changing enroll-
2 ment in a prescription drug plan or MA–PD plan.

3 “(2) AUTHORITY TO ADVISE IN SELECTION OF
4 AND ENROLLMENT IN PLANS.—Any physician,
5 health care professional, or other appropriate indi-
6 vidual who works at a long-term care facility may—

7 “(A) advise any part D eligible individual
8 residing in the facility, or an authorized rep-
9 resentative of such individual, regarding the
10 adequacy of the individual’s prescription drug
11 coverage in meeting the individual’s prescription
12 drug needs (including the individual’s antici-
13 pated prescription drug needs); and

14 “(B) make recommendations to such an in-
15 dividual, with respect to such coverage, includ-
16 ing a recommendation to change enrollment or
17 enroll in a specific prescription drug plan or
18 MA–PD plan that best meets the individual’s
19 current and anticipated prescription drug
20 needs.

21 “(3) AUTHORITY TO ASSIST CERTAIN AUTO-EN-
22 ROLLED PART D ELIGIBLE INDIVIDUALS IN
23 CHANGES OF ENROLLMENT.—

24 “(A) IN GENERAL.—In the case of a part
25 D eligible individual who is enrolled in a pre-

1 scripted drug plan pursuant to section 1860D–
2 1(b)(1)(C), if such individual—

3 “(i) resides in a long-term care facil-
4 ity,

5 “(ii) is incapable of changing such en-
6 rollment, or filing a grievance or coverage
7 determination, redetermination, or appeal
8 under section 1860D–4, and

9 “(iii) does not have an authorized rep-
10 resentative available to assist the indi-
11 vidual in changing such enrollment, or fil-
12 ing such a grievance or coverage deter-
13 mination, redetermination, or appeal, re-
14 spectively,

15 the individual’s physician, health care profes-
16 sional, or other appropriate individual who
17 works at the long-term care facility may act on
18 the individual’s behalf to facilitate the change
19 of enrollment of the individual to the most ap-
20 propriate prescription drug plan under this part
21 for the individual or to file such a grievance or
22 coverage determination, redetermination, or ap-
23 peal, respectively.

24 “(B) CLARIFICATION.—Nothing in this
25 paragraph shall be construed as modifying or

1 altering the rights and responsibilities of des-
2 ignated representatives and authorized rep-
3 resentatives under State law.

4 “(4) REQUIREMENTS FOR ASSISTANCE.—Any
5 individual who assists a Medicare part D eligible in-
6 dividual residing in a long-term care facility pursu-
7 ant to this subsection shall—

8 “(A) inform the resident or the authorized
9 representative of the resident if such individual
10 or the facility has a contractual or financial re-
11 lationship with a prescription drug plan under
12 this part or an MA–PD plan under part C;

13 “(B) not receive any remuneration from
14 the resident or the prescription drug plan or
15 MA–PD plan involved, with respect to the en-
16 rollment of such resident in such plan;

17 “(C) in the case of a resident who is a full-
18 benefit dual eligible individual (as defined in
19 section 1935(c)(6)), recommend the resident
20 enroll in or change enrollment to a prescription
21 drug plan only if such plan has a monthly bene-
22 ficiary premium that does not exceed the pre-
23 mium assistance available under section
24 1860D–14(a)(1)(A)); and

1 “(D) provide the resident or the authorized
2 representative of the resident with a written
3 copy of any advice provided by the individual,
4 with respect to an enrollment, disenrollment, or
5 change of enrollment decision, which includes a
6 statement that the resident may decline such
7 advice, change any decision made pursuant to
8 such advice, or request the assistance of a dif-
9 ferent individual.

10 “(5) CLARIFICATIONS.—

11 “(A) IN GENERAL.—Nothing in this sub-
12 section shall be construed as superseding or
13 otherwise impeding the right of a part D eligi-
14 ble individual who resides in a long-term care
15 facility to make the individual’s own prescrip-
16 tion drug plan enrollment decisions under this
17 part.

18 “(B) NON-PREEMPTION OF STATE
19 LAWS.—Nothing in this subsection shall be con-
20 strued as superseding or otherwise affecting
21 any State law regarding the right of an indi-
22 vidual described in subparagraph (A) to make
23 decisions described in such subparagraph or the
24 right of a representative of such an individual

1 (or other designated person) to make such deci-
2 sions on behalf of the individual.”.

3 (b) IMMEDIATE COVERAGE UPON ENTRY INTO
4 LONG-TERM CARE FACILITIES.—Section 1860D-
5 1(b)(1)(A) of the Social Security Act (42 U.S.C. 1395w-
6 101(b)(1)(A)) is amended to read as follows:

7 “(A) IN GENERAL.—The Secretary shall
8 establish—

9 “(i) a process for the enrollment,
10 disenrollment, termination, and change of
11 enrollment of part D eligible individuals in
12 prescription drug plans consistent with this
13 subsection; and

14 “(ii) in the case of a part D eligible
15 individual who becomes a resident of a
16 long-term care facility, a process for the
17 immediate enrollment of such individual in
18 a prescription drug plan upon the estab-
19 lishment of such residency (and upon such
20 enrollment, immediately effective coverage
21 under such plan) or, in the case of a part
22 D eligible individual who is a resident in a
23 long-term care facility, who is enrolled in a
24 prescription drug plan, and who changes
25 such enrollment to a different prescription

1 drug plan, a process for the immediate en-
 2 rollment of such individual in the different
 3 prescription drug plan (and upon such en-
 4 rollment, immediately effective coverage
 5 under such plan).”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to plan years beginning on or after
 8 January 1, 2009.

9 **SEC. 7. LONG-TERM CARE FORMULARY STRUCTURE AND**
 10 **DESIGN FOR LONG-TERM CARE RESIDENTS.**

11 (a) IN GENERAL.—Section 1860D–4(b)(3) of the So-
 12 cial Security Act (42 U.S.C. 1395w–104(b)(3)) is amend-
 13 ed by adding at the end the following:

14 “(G) LONG-TERM CARE FORMULARY
 15 STRUCTURE AND DESIGN.—

16 “(i) FORMULARY STRUCTURE.—The
 17 formulary must take into account the
 18 needs of part D eligible individuals who are
 19 residents of long-term care facilities by in-
 20 cluding all covered part D drugs that are
 21 medically necessary to such residents at all
 22 levels of care, including alternative dosage
 23 forms, such as liquid that can be adminis-
 24 trated through feeding tubes, intravenous
 25 medications, or intramuscular injections.

1 Access to necessary medications for long-
2 term care residents may be provided
3 through formulary inclusion, utilization
4 management tools, or exceptions processes.
5 The PDP sponsor shall consider the spe-
6 cial circumstances applicable to such indi-
7 viduals when making a coverage deter-
8 mination under subsection (g) and shall
9 base such determination on the individual's
10 health condition, and the interrelationship
11 between the long-term care facility in
12 which the individual resides, the individ-
13 ual's physician, and the individual's long-
14 term care pharmacy, as well as applicable
15 laws and regulations governing the oper-
16 ation of, and care furnished by, the long-
17 term care pharmacy. The formulary of the
18 prescription drug plan may not discourage
19 enrollment in such plan by part D eligible
20 individuals residing in long-term care fa-
21 cilities.

22 “(ii) COVERAGE DURING EXCEPTIONS
23 PROCESS.—The PDP sponsor shall provide
24 a 31-day emergency supply of covered part
25 D drugs not included in the formulary for

1 a part D eligible individual who is a resi-
2 dent of a long-term care facility for any
3 period not included in the period described
4 in clause (iii) during which an exception
5 for such individual is being processed.

6 “(iii) TRANSITION PROCESSES.—The
7 PDP sponsor shall establish and imple-
8 ment an appropriate transition process,
9 with respect to receiving benefits under
10 this part, for part D eligible individuals
11 who are residents (or who are becoming
12 residents) in a long-term care facility and
13 who first enroll in the prescription drug
14 plan and for part D eligible individuals en-
15 rolled in such plan when such individuals
16 become residents of long-term care facili-
17 ties. Such transition process shall include
18 the provision of appropriate temporary or
19 emergency supplies of covered part D
20 drugs included in the formulary, as well as
21 of covered part D drugs not included in
22 the formulary, for at least the 90-day pe-
23 riod, or 180-day period if clinically nec-
24 essary, immediately following the date of
25 enrollment in the plan or the date on

1 which the individual first becomes a resi-
 2 dent of the facility, as applicable.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
 4 subsection (a) shall apply to plan years beginning on or
 5 after January 1, 2009.

6 **SEC. 8. ELIMINATION OF PART D COST-SHARING FOR CER-**
 7 **TAIN NON-INSTITUTIONALIZED FULL-BEN-**
 8 **EFIT DUAL ELIGIBLE INDIVIDUALS.**

9 (a) **IN GENERAL.**—Section 1860D–14(a)(1)(D)(i) of
 10 the Social Security Act (42 U.S.C. 1395w–
 11 114(a)(1)(D)(i)) is amended—

12 (1) in the heading, by striking “INSTITU-
 13 TIONALIZED INDIVIDUALS—In” and inserting
 14 “ELIMINATION OF COST-SHARING FOR CERTAIN
 15 FULL-BENEFIT DUAL ELIGIBLE INDIVIDUALS—”

16 “(I) INSTITUTIONALIZED INDI-
 17 VIDUALS.—In”; and

18 (2) by adding at the end the following new sub-
 19 clauses:

20 “(II) CERTAIN OTHER INDIVID-
 21 UALS.—In the case of an individual
 22 who is a full-benefit dual eligible indi-
 23 vidual and who is a resident of a facil-
 24 ity described in subclause (III) or who
 25 is receiving home and community-

1 based services in a home setting pro-
2 vided under a home and community-
3 based waiver approved for the State
4 under section 1915 or 1115, the elimi-
5 nation of any beneficiary coinsurance
6 described in section 1860D–2(b)(2)
7 (for all amounts through the total
8 amount of expenditures at which ben-
9 efits are available under section
10 1860D–2(b)(4)).

11 “(III) FACILITY DESCRIBED.—
12 For purposes of subclause (II), a fa-
13 cility described in this subclause is an
14 assisted living facility or a resident
15 care program facility (as such terms
16 are defined by the Secretary), a board
17 and care facility (as defined in section
18 1903(q)(4)(B)), or any other facility
19 that is licensed or certified by the
20 State involved and is determined ap-
21 propriate by the Secretary, such as a
22 community mental health center that
23 meets the requirements of section
24 1913(c) of the Public Health Service
25 Act, a psychiatric health facility, a

1 mental health rehabilitation center,
 2 and a mental retardation develop-
 3 mental disability facility.”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 subsection (a) shall apply to drugs dispensed on or after
 6 the date of the enactment of this Act.

7 **SEC. 9. PROVISIONS RELATED TO IMPROPER ASSESSMENT**
 8 **OF BENEFICIARY COST-SHARING OBLIGA-**
 9 **TIONS.**

10 (a) RESOLUTION OF INAPPROPRIATE ASSESSMENT
 11 OF LONG-TERM CARE BENEFICIARY COST-SHARING OB-
 12 LIGATIONS.—Section 1860D–12(b) of the Social Security
 13 Act (42 U.S.C. 1395w–112(b)) is amended by adding at
 14 the end the following:

15 “(4) RESOLUTION OF INAPPROPRIATE ASSESS-
 16 MENT OF LONG-TERM CARE BENEFICIARY COST-
 17 SHARING OBLIGATIONS.—

18 “(A) IN GENERAL.—The Secretary shall
 19 not enter into a contract with a PDP sponsor
 20 for the offering of a prescription drug plan for
 21 a year unless the PDP sponsor provides assur-
 22 ances to the satisfaction of the Secretary that—

23 “(i) to the extent the PDP sponsor, or
 24 information provided to the PDP sponsor
 25 by or on behalf of the Secretary, fails to

1 correctly identify a part D eligible indi-
2 vidual who is residing in a long-term care
3 facility and who is receiving covered part D
4 drugs from a long-term care pharmacy, as
5 a full benefit dual eligible individual (as
6 defined in section 1935(c)(6)) or as a sub-
7 sidy-eligible individual (as defined in sec-
8 tion 1860D–14(a)(3)), and any cost-shar-
9 ing obligation is incorrectly assessed
10 against such individual, the PDP sponsor
11 shall accept from the long-term care phar-
12 macy any applicable evidence described in
13 subparagraph (B) and the attestation de-
14 scribed in subparagraph (C) to dem-
15 onstrate that the individual is eligible for
16 an adjustment to (or exempt from) such
17 cost-sharing;

18 “(ii) upon receipt of such evidence
19 that demonstrates the individual is so eligi-
20 ble (or so exempt), the PDP sponsor shall
21 make such adjustment to (or exempt the
22 individual from) any such cost-sharing;
23 and

24 “(iii) not later than 60 days after re-
25 ceipt of such evidence that demonstrates

1 such eligibility, the PDP sponsor will reim-
2 burse the individual any improperly as-
3 sessed cost-sharing or, in the case that the
4 individual (or a representative of such indi-
5 vidual) has not paid the improperly as-
6 sessed cost-sharing amount, timely reim-
7 burse the long-term care pharmacy for
8 such improperly assessed amount, but in
9 no case may the PDP sponsor send pay-
10 ments under this clause directly to a full
11 benefit dual eligible individual or a subsidy
12 eligible individual residing in a long-term
13 care facility unless the PDP sponsor has
14 direct evidence that such individual has ac-
15 tually paid such cost-sharing amount.

16 “(B) EVIDENCE DESCRIBED.—For pur-
17 poses of subparagraph (A), evidence described
18 in this subparagraph is the following:

19 “(i) For purposes of determining the
20 status of an individual as a full benefit
21 dual eligible individual, a plan ID number
22 to establish such individual has coverage
23 for covered part D drugs under a prescrip-
24 tion drug plan or under an MA–PD plan
25 and a Medicaid ID number to establish

1 such individual is determined eligible by
2 the State involved for medical assistance
3 for full benefits under title XIX.

4 “(ii) For purposes of determining in-
5 stitutionalized status of an individual, the
6 date on which the individual entered a
7 long-term care facility, or any medical in-
8 stitution for which payment is made under
9 this title or title XIX, including inter-
10 mediate care facilities for the mentally re-
11 tarded, psychiatric hospitals, and assisted
12 living facilities.

13 “(C) ATTESTATION.—For purposes of sub-
14 paragraph (A), the attestation described in this
15 subparagraph, with respect to a pharmacy and
16 a prescription drug plan is an attestation from
17 the pharmacy, subject to audit, that the evi-
18 dence described in subparagraph (B) that is
19 provided by such pharmacy to the plan is accu-
20 rate.”.

21 (b) IMMEDIATE REDUCTION IN COST-SHARING UPON
22 ADMISSION INTO INSTITUTION.—Section 1860D-
23 14(a)(1)(D)(i) of the Social Security Act (42 U.S.C.
24 1395w-114(a)(1)(D)(i)) is amended by inserting “upon

1 the admission of such individual or couple, respectively,
 2 to the institution,” before “the elimination of”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to plan years beginning on or after
 5 January 1, 2009.

6 **SEC. 10. REPORT TO CONGRESS.**

7 (a) IN GENERAL.—Section 1860D–4(b)(1) of the So-
 8 cial Security Act (42 U.S.C. 1395w–104(b)(1)) is amend-
 9 ed by adding at the end the following:

10 “(F) ANNUAL REPORT ON ACCESS TO COV-
 11 ERED PART D DRUGS FOR LONG-TERM CARE
 12 RESIDENTS.—The Secretary shall submit to
 13 Congress an annual report on the adequacy of
 14 the access to covered part D drugs available to
 15 part D eligible individuals who are residents of
 16 long-term care facilities through long-term care
 17 pharmacies participating in networks of pre-
 18 scription drug plans. Such a report shall in-
 19 clude—

20 “(i) the extent to which part D long-
 21 term care performance and service stand-
 22 ards governing the delivery of specialized
 23 long-term care services, as specified by the
 24 Secretary, to part D eligible individuals,
 25 including any guidance issued by the Sec-

1 retary and industry best practices, are
2 being met;

3 “(ii) the percentage of such residents
4 who are enrolled in a prescription drug
5 plan that meets the prescription drug
6 needs of such residents; and

7 “(iii) the number of exceptions and
8 prior authorization requests submitted by
9 such residents and the number of such ex-
10 ceptions and requests that are approved by
11 the prescription drug plans involved.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to plan years beginning on or
14 after January 1, 2009.

○